

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES PERRY

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Plaintiff,

*

vs.

*

Civil Action No.:

FLEETWOOD ENTERPRISES, INC.,
FLEETWOOD HOMES OF GEORGIA,
INC., and Fictitious
Defendants “A”, “B”, and “C”,

*

2:06-cv-00502-MEF

*

Defendants.

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**REQUEST FOR ORAL ARGUMENT OF DEFENDANTS’ MOTION
TO DISMISS PURSUANT TO FED. R. CIV. PROC. 12(b)(6) AS
PLAINTIFF’S CLAIMS ARE PREEMPTED BY FEDERAL LAW**

COME NOW, the Defendants, Fleetwood Enterprises, Inc. and Fleetwood Homes of Georgia, Inc., (hereinafter “Fleetwood”) and by and through undersigned counsel and moves the Court to grant oral argument on its Motion to Dismiss based upon preemption.

The Defendant shows unto the Court that the pertinent portions of the relevant statutes (42 U.S.C. §5401 et seq.— Manufactured Housing Construction and Safety Standards Act —“MHCSSA”) and regulations (24 CFR §3280 et seq. — Manufactured Home Construction and Safety Standards and 24 CFR §3282 Manufactured Home Procedural and Enforcement Regulations — “HUD Standards”) have been significantly amended and modified since the 1995 decision of the Supreme Court of Alabama in *Turner v. PFS Corp.*, 674 So. 2d 60 (Ala. 1995) and virtually all, if not all cases relied

upon by Plaintiff relate to homes, regulations, and statutes pre-dating the statutes and regulations at issue herein.

Additionally, since the *Turner* decision the U.S. Supreme Court decided *Geier et al. v. American Honda Motor Company, Inc. et al.*, 529 U.S. 861; 120 S. Ct. 1913; 146 L. Ed. 2d 914 (2000). Thus, the application of preemption based upon these amended regulations and statutes is a matter of first impression under Alabama and federal law.

WHEREFORE, Fleetwood respectfully requests that this Honorable Court grant Fleetwood's Request for Oral Argument on the significant modifications of the Act and the applicable standards promulgated since the decisions relied upon in the Plaintiffs Memorandum in Opposition to Defendants' Motion to Dismiss Based Upon Preemption.

DATED this 18 th day of August, 2006.

Respectfully Submitted,

s/ James H. Crosby
JAMES H. CROSBY (CRO026)
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CERTIFICATE OF SERVICE

I hereby certify that I have on this 18 th day of August, 2006, served a true and correct copy of the above and foregoing, **Defendants, Fleetwood Enterprises, Inc.'s and Fleetwood Homes of Georgia Inc.'s Request for Oral Argument on its Motion to Dismiss Pursuant to Fed. R. Civ. Proc. Rule 12(b)(6) as Plaintiff's Claims Are Preempted by Federal Law**, upon counsel of record in this proceeding by electronic service using the CM/ECF system and by placing the same in the United States Mail, properly addressed and first-class postage prepaid to the following party:

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s/ James H. Crosby
JAMES H. CROSBY